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Attorney for Defendant  
JARAY SIMMONS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JARAY SIMMONS,

Defendant.

Case No. CR-18-00179-EMC

**DEFENDANT'S SENTENCING  
MEMORANDUM**

Date: August 14, 2019  
Time: 2:30 p.m.

Defendant JARAY SIMMONS, by and through his counsel of record, Dena Marie Young, hereby submits his Sentencing Memorandum.

**INTRODUCTION**

On May 7, 2019, SIMMONS entered a plea of guilty to conspiracy to commit robbery affecting interstate commerce in violation of 18 U.S.C. § 1951(a) [Count One]; conspiracy to possess with intent to distribute marijuana in violation of 21 U.S.C. § 846 [Count Two]; and brandishing of a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(i) [Count Five].

The plea agreement, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, anticipated an adjusted offense level of 28. Combined with a criminal history category of IV, the resulting guidelines range is 110-137 months imprisonment on Counts One and Two, with a consecutive seven years on Count Five.

For the reasons discussed below, SIMMONS requests that this Court impose a custodial sentence of 132 months. Such a sentence would be a reasonable sentence within the meaning of *Gall v. United States*, 552 U.S. 38 (2007), and is consistent with the factors set out in 18 U.S.C. § 3552(a).

# I.

## OBJECTIONS TO THE PRESENTENCE REPORT

SIMMONS has no objections to the guideline calculations or to the calculations of his criminal history set out in the presentence report.

### Adult Criminal Convictions ¶ 57

SIMMONS objects to the inclusion of the last two sentences in paragraph 57 as follows:

“While working on Simmons’ arrest sheet, he stated if officers located him five hours earlier, they would have found him with over 40 grams of heroin and a gun on his person. He advised that there was approximately nine ounces of cocaine at 906 Alder Street, but it was flushed prior to police locking the house down.”

Information relied upon in the pre-sentence report must be reliable. *United States v. Weston*, 448 F.2d 626, 634 (9<sup>th</sup> Cir. 1971). The fact that something appears in a police report does not make it *per se* reliable.

These two sentences purport to be a statement made by SIMMONS admitting to much more serious offenses involving heroin, cocaine and a gun while he was being booked for misdemeanor possession of marijuana and drug paraphernalia. It makes no sense for him to have made such a statement. SIMMONS denied making it when he pled guilty to the marijuana-related charges. He continues to deny having made that statement. He was never charged with any offense related to the purported admission, nor is there evidence to corroborate the statement. The statement is needlessly inflammatory and could have an adverse impact on his classification at the Bureau of Prisons as it suggests a much more serious offense occurred. For these reasons, SIMMONS requests that these two sentences be stricken.

1 II.

2  
3 **THIS COURT SHOULD IMPOSE A SENTENCE OF 132 MONTHS**  
4 **BECAUSE IT IS A REASONABLE SENTENCE CONSIDERING THE**  
5 **FACTORS SET OUT IN 18 U.S.C. § 3553(A).**

6 While the guidelines must be respectfully considered, they are one factor among the §  
7 3553(a) factors that are to be taken into account in arriving at an appropriate sentence. *United*  
8 *States v. Carty*, 520 F.3d 984, 992 (9th Cir.2008). Sentencing courts must give “meaningful  
9 consideration” to all of the statutory factors in 18 U.S.C. §3553(a). Section 3553(a) clearly states  
10 that a court must impose a sentence that is “sufficient but not greater than necessary to comply  
11 with the purposes of sentencing. This requirement is often referred to as ‘the parsimony  
12 provision,’ and the Supreme Court has referred to it as the “overarching instruction” of 18 U.S.C.  
13 §3553(a). See *Kimbrough v. United States*, 552 U.S. 85 (2007). Although the offender’s conduct  
14 is part of the sentencing equation, it is not the totality of it, and the sentencing court must not focus  
15 on the offense at the expense of the individual offender. *United States v. Booker*, 543 U.S. 220  
16 (2005) and *United States v. Ameline*, 409 F.3d 1073 (9th Cir.2005) (*en banc*). The sentence must  
17 be long enough to reflect the seriousness of the offense, provide for just punishment and promote  
18 respect for the law. Further, it should afford adequate deterrence to criminal conduct in general  
19 and protect the public. It must be “sufficient but not greater than necessary” to reflect societal  
20 concerns and individual considerations. 18 U.S.C. § 3553(a).

21 In this case, based upon a total offense level of 28 and a criminal history category of IV,  
22 the guideline range is 110-137 on Counts One and Two, with a consecutive term of seven years  
23 on Count Five. Counsel for SIMMONS believes that a term of 132 months is a reasonable sentence  
24 under the circumstances and is sufficient but not greater than necessary to comply with the  
25 purposes of sentencing.

26 III.

27 **EVALUATION**

28 The nature and circumstances of the offenses are set forth in the pre-sentence report.

1 SIMMONS was born in and raised in North Carolina. He has never had a stable home life.  
2 His father went to prison when he was around a year old and was never in his life. His mother had  
3 relationships with various men over the years. Unfortunately, these men were abusive to her and  
4 to her children. Substance abuse was a major factor. The abuse sometimes led SIMMONS to run  
5 away from home and to stay away for extended periods of time. As a result, he grew up on the  
6 street. He looked to older men as role models, who, in hindsight, did not really have his best  
7 interests in mind and were not making positive decisions themselves. SIMMONS got involved in  
8 using marijuana and selling drugs. He did not finish high school, though he later obtained his GED  
9 while incarcerated. SIMMONS has never held a job for any length of time and lacks the skills he  
10 needs to be gainfully employed.

11 Despite his childhood frustrations with his mother's behavior, and her current alcoholism,  
12 SIMMONS continues to maintain a relationship with his mother. He also stays in contact with his  
13 two younger half-sisters. SIMMONS has been in a relationship with Phylicia Ingram since 2008.  
14 They have a child together, a little boy named Jasuad who is about 16 months old. Sadly,  
15 SIMMONS has been incarcerated on this case for most of his young life. Father and son only see  
16 each other on a computer screen during video visits from the jail. SIMMONS knows he is missing  
17 out on seeing his son grow up day by day.

18 As he approaches his thirtieth birthday, SIMMONS is now facing the longest sentence he  
19 has ever faced in his life. He understands that the court can choose to incarcerate him for a very  
20 long time. A guideline sentence is not necessary to deter him from future criminality, nor is it  
21 necessary for protection of the public. Further, it would be detrimental to SIMMONS' child who  
22 would grow up, as SIMMONS did, without his father in his life to provide the support and stability  
23 he needs.

24 SIMMONS admitted the offense conduct at the time of his arrest and again in the plea  
25 agreement. He accepts full responsibility for his wrongdoing. SIMMONS has used his time while  
26 in custody to reflect on his life, on the choices that he has made, and on the reasons behind those  
27 choices. He has come to understand that the instability of his early upbringing, and his frequent  
28 exposure to violence and substance abuse has desensitized him to their true impact. He does not

1 want his child to face the same conditions, nor does he want him to grow up without a father as he  
2 was forced to do. He already worries about having to explain to his son why he was not around.

3 SIMMONS understands that this is his last opportunity to put his life back on track, and to  
4 become a productive citizen for his sake and for the sake of his family. He feels guilty that his  
5 conduct has led to his incarceration, which has taken him away from his child. He also regrets the  
6 harm he caused to the victims in this case.

7 While SIMMONS never finished high school, he did obtain his GED while incarcerated in  
8 state prison. SIMMONS has never held a job for any length of time. He admits that he quit  
9 because he did not like what he was doing. He understands that he needs to acquire job skills to  
10 carry him forward, and to allow him to support himself and his family in a lawful and productive  
11 fashion. He enjoyed working (unofficially) as a barber and would like to obtain the training  
12 necessary to open his own shop at some point in the future.

13 SIMMONS also recognizes that his use of marijuana played a role in his poor decision-  
14 making. It was a significant factor in his commission of this offense.

15 SIMMONS will turn thirty later this year. A sentence that is too long will make it more  
16 difficult for him to obtain future employment. SIMMONS' earnings will also be necessary to pay  
17 the substantial restitution that is owing in this case. A sentence of eleven years will allow him to  
18 be released from custody while his son is still a young teenager, and during the time when he will  
19 likely need his father the most. It is long enough to punish SIMMONS for his crimes and to deter  
20 him from any future misconduct, yet it gives him hope that he will be able to have a productive  
21 future with his family.

22 SIMMONS wants to use his time in prison to obtain vocational training so that he has  
23 options for future employment. He understands that he must avoid the negative influences in his  
24 life, including friends who may have contributed to his poor decision making. In addition to  
25 vocational training, SIMMONS recognizes that he may also need assistance with substance abuse  
26 issues, especially marijuana use, when he is once again exposed to the pressures of daily life. He  
27 wants to use what resources are available to him in prison, through RDAP if it is available to him,  
28 and eventually through supervised release.

